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Message Text

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13
ORIGIN L-03

INFO OCT-01 NEA-10 ISO-00 ABF-01 AID-20 TRSE-00 OMB-01

JUSE-00 A-01 OPR-02 EB-11 RSC-01 /051 R

DRAFTED BY L/NEA:ATBROWN:HME
APPROVED BY NEA/INS:LBLAINGEN
L/M/SCA:HBURMAN
M/FRM/FM:RWHITENER(SUBS)
NEA/INS:DWBORN
AID/ASIA:CHREES
AID/GC:MKITAY
TREASURY:SCOX
OMB:AIVORY(INFO)
NEA/EX:EPERKINS
JUSTICE, FOREIGN LITIGATION: MR. RISTAU (INFO)
A/O:MR HUNT
---------- 064481
R 222306Z MAR 74
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI

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E.O. 11652: N/A
TAGS: EFIN, IN
SUBJECT: RUPEES: 75:25 PROCUREMENT BY POST AND BASE EXCHANGES

REF: (A) NEW DELHI 507; (B) STATE 24468; (C) NEW DELHI 1885; (D) NEW DELHI 2530

1. PRINCIPAL CONCERN HERE WITH PURCHASES UNDER PART II, PARA 10(C) OF RUPEE AGREEMENT BY POST AND BASE EXCHANGES IS POSSIBLE USG EXPOSURE TO LIABILITY UNDER SUCH TRANS-ACTIONS. PARA 10(C) BEGINS "THE GOVERNMENT OF THE USA MAY PURCHASE, FOR EXPORT..." IF DISPUTE ARISES BETWEEN SUCH AN EXCHANGE AND INDIAN SELLER, EXISTENCE OF QUOTED
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LANGUAGE TOGETHER WITH POSSIBLE GOI EXPORT DOCUMENTATION

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DESIGNATING USG AS PURCHASER COULD SUFFICE TO PROVIDE BASIS FOR LEGAL ACTION BY SELLER AGAINST USG IN INDIA. REF (C) REPORTS THAT "GOI CONSIDERS SUCH PURCHASES TO BE PURCHASES BY USG." GOI MUST ADOPT THAT VIEW IN ORDER TO PERMIT EXCHANGE PURCHASES UNDER PARA 10(C), BUT IT HAS EFFECT OF REENFORCING CONCERNS HERE ON USG LIABILITY ISSUE. EMBASSY AND EXCHANGES SHOULD BE CLEAR THAT APPROPRIATED FUNDS PRESENTLY AVAILABLE TO EITHER DEPT OF STATE OR DEPT OF JUSTICE CANNOT RPT NOT BE APPLIED TO SATISFY JUDGMENTS AGAINST USG RESULTING FROM POST EXCHANGE TRANSACTIONS UNDER THESE CIRCUMSTANCES.

2. THE FOREGOING NOTWITHSTANDING, FULL IMPLEMENTATION OF PARA 10(C) IS BELIEVED DESIRABLE TO EXTENT IT WILL HAVE POSITIVE EFFECT ON USG BALANCE OF PAYMENTS. ACCORDINGLY, WASHINGTON AGENCIES APPROVE POST AND BASE EXCHANGE PURCHASES ON FOLLOWING CONDITIONS:

(A) EMBASSY CONCLUDES PARA 10(C) BENEFITS UNLIKELY TO BE FULLY UTILIZED IN ABSENCE OF EXCHANGE PURCHASES;

(B) GOODS PURCHASED FROM INDIAN SUPPLIER MUST NOT CONSTITUTE SUBSTITUTE FOR US-ORIGIN GOODS;

(C) IF GOODS ALSO AVAILABLE IN THIRD COUNTRIES, INDIAN PRICE IS SUCH THAT NET BALANCE OF PAYMENTS RESULT IS MORE FAVORABLE THAN IN CASE OF PURCHASE ELSEWHERE;

(D) IF GOODS ENDEMIC TO INDIA, PRICES CHARGED FOR 25/75 SALE NOT HIGHER THAN FOR 100 PERCENT DOLLAR PURCHASE.

3. CONDITION (B) IS STANDARD REQUIREMENT FOR USE OF FOREIGN CURRENCIES.CONDITIONS (C) AND (D) ARE DRAWN FROM PRACTICE INSTITUTED IN SIMILAR CIRCUMSTANCES IN YUGOSLAVIA. KISSINGER

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